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RITE AID CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KIMBERLY BEAGLE,
Plaintiff,

vs.

RITE AID CORPORATION; and DOES
1 TO 100, INCLUSIVE,
Defendants.

Case No.: CV08-1517-PJH

**[PROPOSED] ORDER GRANTING
DEFENDANT RITE AID'S MOTION
TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION
(FRCP 12(b)(1))**

Date: Wednesday, June 4, 2008
Time: 9:00 a.m.
Dept.: Courtroom 3, 17th Floor

On June 4, 2008, the motion of Defendant Rite Aid Corporation ("Rite Aid") to dismiss the disability harassment cause of action (the Second Cause of Action) in the complaint filed by Plaintiff Kimberly Beagle ("Plaintiff") came on regularly for hearing before the Honorable Phyllis A. Hamilton. Mark Adams, Esq. of Mayall, Hurley, Knutsen, Smith & Green appeared on behalf of Plaintiff. Annmarie M. Liermann, Esq. of Kelly, Hockel & Klein, P.C. appeared on behalf of Defendant.

The Court having considered the papers filed in support of and in opposition to the motion, the arguments of counsel at the hearing on the motion, and the pleadings on file in this action, makes the following order:

1 Defendant's motion to dismiss Plaintiff's disability harassment claim (the
2 Second Cause of Action) is hereby GRANTED with prejudice. The Court lacks
3 jurisdiction over the disability harassment cause of action because Plaintiff
4 failed to exhaust her administrative remedies as to that claim.

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6 IT IS SO ORDERED.

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9 DATED:

10 Judge Phyllis A. Hamilton
11 Judge of the United States District Court,
12 Northern District of California
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